

REMARKS

Applicants respectfully request reconsideration of the present application in view of the following reasons.

Status of the claims

Claims 1-27 are pending. No claims are amended.

In the Office Action, the PTO withdrew the finality of the rejection of last office action dated January 7, 2007 to clarify the record and the state of the claims (item 2 of the Office Action). The PTO indicated that all the claims are under examination. For example, the cover page of the Office Action does not list any claims as being "WITHDRAWN" while claims 1-27 are listed as pending; Item 6 states that claims 2-27 are objected to, but allowable; and Item 7 states that the search was expanded over the full scope of the pending claims. Accordingly, Applicants understand the PTO to have reinstated claims 2, 3, 5-7, 10-13, and 15-27 for examination.

Double Patenting Rejection

In the Office Action, the PTO provisionally rejected claim 1 under the doctrine of obviousness-type double patenting over claim 4 of co-pending application No. 10/388,173. The PTO explained that the "conflicting claims" are not patentably distinct from each other because both claims are directed to products having a radiolabeled halogen. In support of the rejection, the PTO alleged that the cited and rejected claims require the presence of a radioactive halogen (page 4 of the Office Action). Applicants respectfully disagree with the PTO's reasoning and conclusion.

Cited claim 4 in the '173 application does not render obvious present claim 1 for the following reasons. First, claim 4 of the '173 application encompasses ^{131}I , ^{125}I , ^{123}I , ^{76}Br , ^{75}Br , ^{18}F , and ^{19}F substituted compounds, placing no particular qualification on the location of the recited isotopes. In contrast, present claim 1 specifically requires a radiolabel to appear in substituent R^2 or R^4 , e.g., " R^4 is hydrogen, $\text{C}_1\text{-C}_6$ alkyl, $\text{C}_2\text{-C}_6$ alkenyl or $\text{C}_2\text{-C}_6$ alkynyl, wherein the alkyl, alkenyl or alkynyl comprises a radioactive carbon or is substituted with a radioactive halo when R^2 is a non-radioactive halo." Thus, claim 4 does not suggest the presently claimed number and substitution pattern of radioactive substituents.

Second, other structural differences distinguish the subject matter of present claim 1 from that of claim 4 of the '173 application. For instance, claim 1 recites only benzothiazole anilines,

whereas claim 4 more broadly encompasses benzothiazole phenols as well. Also, present claim 1 requires R² to be a non-radioactive halo or radioactive halo, whereas claim 4 of the '173 application allows the corresponding substituent in a benzothiazole aniline to be H or alkyl in addition to halo. Such broad possibilities in the cited claim do not fairly suggest the specific structural requirements of present claim 1.

For these reasons, the subject matter of claim 1 is not an obvious variant of that in cited claim 4, and so the issuance of claim 1 would not manifest an improper time-wise extension of patent protection for the claimed compounds. Applicants therefore courteously urge the PTO to reconsider and withdraw this rejection.

Claim Objections

The PTO objected to claims 2-27 for being dependent upon a rejected base claim, the claims being otherwise allowable. The commentary above, however, should resolve the PTO's stated concern over independent claim 1 and thereby moot the present objection.

Applicants believe that the present application is in condition for allowance. Applicants therefore respectfully request an early and favorable reconsideration by the PTO. Should Examiner Jones believe that any issues warrant a discussion, she is kindly invited to contact the undersigned by telephone.

Respectfully submitted,

Date Aug. 1, 2007

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The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.